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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,137	07/18/2003	Michael Pandura	028987.52385US	1862
23911	7590	12/15/2005	EXAMINER	
CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			GROSSO, HARRY A	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/622,137	PANDURA, MICHAEL	
	Examiner Harry A. Grosso	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 July 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) 5 and 6 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-4, 7- 9 and 11-20 is/are rejected.
 7) Claim(s) 10 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 18 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/18/03, 2/10/05</u> . | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention:
Group I – transmission element is a lever
Group II – transmission element is a linkage
Group III – transmission element is a slider.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 11 and 19 appear generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Mr. James McKeown on December 7, 2005 a provisional election was made without traverse to prosecute the invention of Group III, claims 1-4 and 7-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5 and 6 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Objections

3. Claim 16 is objected to because of the following informalities: line two of claim 16 recites a "slot as said holder." The examiner believes "as" should be "in" and will read it as such for this action. Appropriate correction is required.

4. Claim 20 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. As presented, claim 20 is dependent on claim 17 through claim 18. Claim 17 discloses the same limitation as claim 20. The examiner believes the intent is to have claim 20 depend on claim 19 and will treat it as such for purposes of this action.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 11-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claims 11 and 19 recite limitation "removal of the receptacle from the receptacle" in the sixth line of each claim. It does not appear the receptacle can be removed from itself. The examiner believes removal of the receptacle from the holder is intended.

8. Claims 12-18 and 20 depend from claims 11 and 19.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-4, 7-9, 11-13, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Knapp (2,946,474).

11. Regarding claims 1, 2, 8, 11, 12, 19 and 20, Knapp discloses an assembly capable of being used as an ashtray with a holder (10), a receptacle (38) and a means for lifting the receptacle from a first position to a second position for removal. The assembly has a manually operable actuator (20), a transmission element (30), a pivotal lever (46) hinged at its lower end (48, 50) and a cam shaped upper end area (54). (Figures 1-2, column 1, line 67 to column 2, line 7 and column 2, lines 31-37).

12. Regarding claim 3, Knapp discloses the lever arm is hinged (52) with the transmission element at a distance from the mount for the transmission element (31).

13. Regarding claims 4 and 7, Knapp discloses the transmission element is a slider, sliding vertically through its mount (31).
14. Regarding claims 9, Knapp discloses the upper end area of the lever acts together with the flange at the pivot point for the lever through the lever.
15. Regarding claim 13, Knapp discloses the lifting lever pivot connection is at the holder (28, 48, 50).
16. Claims 1, 2, 4, 8, 9, 11-13, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Buschman (1,820,555).
17. Regarding claims 1, 2, 8, 11, 12, 19 and 20, Buschman discloses an assembly capable of being used as an ashtray with a holder (1), a receptacle (9) and a means for lifting the receptacle from a first position to a second position for removal. The assembly has a manually operable actuator (12), a transmission element (11), a pivotal lever (17) hinged at its lower end (18) and a cam shaped upper end area. (Figures 1-3, page 1, lines 63-80).
18. Regarding claims 4, Buschman discloses the transmission element is a linkage.
19. Regarding claims 9, Buschman discloses the upper end area of the lever acts together with the flange at the pivot point for the lever through the lever.
20. Regarding claim 13, Buschman discloses the lifting lever pivot connection is at the holder (18).
21. Claims 19 and 20 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wegel et al (DE 4427868, February 2, 1996). Wegel et al discloses an ashtray

assembly with a holder (1), a receptacle (2) and a means for lifting the receptacle from a first position to a second position for removal.

Allowable Subject Matter

22. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

23. Claims 14-18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nathan Newhouse
Supervisory Patent Examiner
Art Unit 3727

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